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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,968	01/24/2002	Joanna Hong Zhang	J6721(C)	3889

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/17/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/056,968

Applicant(s)

ZHANG ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 1-11 are pending. The Amendment filed 8/18/03, Paper No. 9, added claims 10-11, amended claims 1 and 3.

Applicant's Amendment to the claims filed 8/18/03, Paper No. 9, is sufficient to overcome the 35 USC 112 rejection in the previous Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (5,422,112) in view of Loffler et al. (InCosmetics, Dusseldorf) and in view of Beerse et al. (6,294,186).

The instant invention is directed toward a composition comprising from 0.001-5% of a polysaccharide gum, 0.001-10% of a taurate copolymer, and a cosmetically acceptable carrier, wherein the composition has a pH less than 7.

Williams teaches thickened cosmetic compositions comprising a xanthan gum, an inorganic thickening agent, an alpha hydroxy carboxylic acid, and a cosmetically acceptable carrier. Glycolic acid, lactic acid, and 2-hydroxyoctanoic acid are taught as alpha hydroxyl carboxylic acid. The gums are taught as comprising 0.01-5% of the composition. The pH of the compositions range from 1-8. Exemplified are compositions of 3.8-4 pH. Oil-in-water

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emulsions are taught as preferred cosmetic forms. The reference lacks taurate copolymers. See abstract; Col. 1, lines 45-54; Col. 3, lines 39-42; Col. 6, line 46.

Loffler et al. teach ammonium acryloyldimethyltaurate/vinyl pyrrolidone as a thickener for oil-in-water emulsions. The compound is taught as having good stability against degradation by high shear and UVA light, as having good compatibility with polar solvents, and as providing excellent sensoric properties to the user, such as good skin feel, low degree of stickiness and/or tackiness. See page 1.

Beerse et al. teach ammonium acryloyldimethyltaurate/ vinyl pyrrolidone, xanthan gums, and synthetic clays, which are inorganic thickeners, as combinable thickeners for use in cosmetic compositions. See Col. 38, lines 25-31.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the ammonium acryloyldimethyltaurate/ vinyl pyrrolidone, taught by Loffler et al., into the composition of Williams because Beerse et al. teach ammonium acryloyldimethyltaurate/ vinyl pyrrolidone, inorganic thickeners, and xanthan gum, as combinable thickeners, and because of the expectation of achieving an oil-in-water emulsion that has good stability against degradation by high shear and UVA light and that provides good skin feel, low degree of stickiness and/or tackiness to the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the taurate copolymer of the combined references as comprising 0.001-10% of the composition because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

Applicant argues unexpected results. The Examiner respectfully directs Applicant to the guidelines for establishing unexpected results. It is applicant's burden to demonstrate unexpected results over the closest prior art. See MPEP 716.02, also 716.02 (a) - (g). Furthermore, the unexpected results should be demonstrated with evidence that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Moreover, evidence as to any unexpected benefits must be "clear and convincing" *In re Lohr*, 137 USPQ 548 (CCPA 1963), and be of a scope reasonably commensurate with the scope of the subject matter claimed, *In re Linder*, 173 USPQ 356 (CCPA 1972).

Applicant argues, "With all of the polysaccharides, Aristoflex provided a much better viscosity build in the AHA system". This argument is not persuasive, as a better viscosity build is not synonymous to an expected result.

Applicant argues, "Applicants do not dispute that the combination of taurate copolymers and polysaccharide gums were available to those skilled in the art as thickening systems. Yet these are not the only materials available to thicken and it is not obvious they would be particularly effective with alpha-hydroxycarboxylic acids (AHA). Not all combinations of thickeners lead to an optimum result". This argument is not persuasive. As stated in the previous Office Action, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add ammonium acryloyldimethyltaurate/vinyl pyrrolidone into the composition of Williams because Beerse et al. teach that the copolymer can be combined with xanthan gum and inorganic thickeners, as taught by Williams, and because of the copolymer's

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beneficial properties, as taught by Loffler et al., such as its ability to provide good stability against degradation by high shear and UVA light, its good compatibility with polar solvents, its ability to impart excellent sensoric properties to a user, such as good skin feel and low degree of stickiness and/or tackiness.

Applicant argues, "Applicants' comparative experiments have demonstrated the unexpected nature of combining different types of thickeners in the presence of alpha-hydroxycarboxylic acid". This argument is not persuasive, as Applicant's data in the specification is not persuasive to show unexpected results. The data is not a comparison with the closest prior art, is not commensurate in scope with the instant claims, and does not demonstrate results of practical significance.

Applicant argues, "Williams teaches the essential need for a polyacrylamide. . . However, this is no disclosure that Aristoflex AVC in combination with a polysaccharide would achieve any meaningful improvement in viscosity, especially in AHA systems. There would be no incentive to therefore replace Sepigel polyacrylamides with Aristoflex taurate copolymers in the xanthan/AHA environment of Williams". This argument is not persuasive. Given the benefits of these copolymers as taught by Loffler and referred to in the paragraphs above and given that it is known in the art to combine these copolymer thickeners with xanthan gums and inorganic thickeners, there would be motivation to add these copolymers to the compositions of Williams or to substitute the copolymers for the polyacrylamides of Williams.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

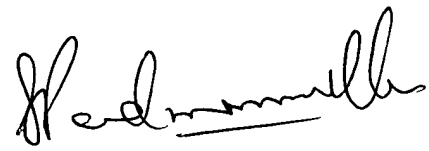
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

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SREENI PADMANABHAN
PRIMARY EXAMINER

9/13/08